

APPEAL NO. 032353
FILED OCTOBER 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 6, 2003. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter. The claimant appealed the determinations regarding good faith and SIBs entitlement on sufficiency grounds. The respondent (carrier) did not file a response to the claimant's appeal.

DECISION

Affirmed.

Attached to the claimant's appeal are documents that were admitted into evidence at the hearing, as well as documents that were not offered into evidence at the hearing. Generally, the Appeals Panel does not consider documents not offered into evidence at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the appeal, as the information was clearly known to the claimant prior to the CCH and could have been presented at the hearing with the exercise of due diligence by the claimant.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The claimant argued that she had been promised a job during the qualifying period, and only had to wait until the paperwork and background checks were done. The evidence indicated that the qualifying period for the eighth quarter ended on May 15, 2003, and that the claimant started working on June 18, 2003. The hearing officer could find from the evidence that the claimant's efforts to obtain employment during the qualifying period did not meet the criteria of Rule 130.102(d)(1) or Rule 130.102(e). The claimant did not return to work during the qualifying period, the job she eventually obtained was still speculative at the end of the qualifying period, and the claimant did not otherwise qualify for SIBs by making a weekly job search. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the

evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

According to information provided by the carrier, the true corporate name of the insurance carrier is **WAUSAU BUSINESS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge